STATE OF MICHIGAN

COURT OF APPEALS

MARILYN MCKIDDIE, Plaintiff-Appellee,	UNPUBLISHED October 18, 2007
v	No. 272597 Wayne Circuit Court
SUPER BOWL OF CANTON, INC, Defendant-Appellant.	LC No. 05-521091-NO

Before: Murphy, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

In this premises liability case, defendant appeals by leave granted the trial court's order denying its motion for summary disposition. We reverse and remand.

Plaintiff, an experienced bowler, slipped and fell at defendant bowling alley on the bowling lane approach as she was walking backwards, watching her ball roll down the lane. Plaintiff broke her wrist. Plaintiff sued defendant alleging that defendant was negligent in maintaining its premises. Defendant moved for summary disposition, which the trial court denied. On appeal, defendant argues that the trial court erred by imposing a duty on defendant when plaintiff had actual knowledge that the approach was slippery. We agree.

We review a trial court's decision on a motion for summary disposition under MCR 2.116(C)(10) de novo, and, on review, must consider the pleadings, depositions, admissions and other documentary evidence in a light most favorable to the nonmoving party. *Morris & Doherty, PC v Lockwood,* 259 Mich App 38, 41-42; 672 NW2d 884 (2003). If the nonmoving party fails to establish that a material fact is at issue, the motion is properly granted. *Quinto v Cross & Peters Co,* 451 Mich 358, 363; 547 NW2d 314 (1996).

"A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if the owner: (a) knows of, or by the exercise of reasonable care would discover, the condition and should realize that the condition involves an unreasonable risk of harm to such invitees; (b) should expect that invitees will not discover or realize the danger, or will fail to protect themselves against it; and (c) fails to exercise reasonable care to protect invitees against the danger." *Stitt v Holland Abundant Life Fellowship,* 462 Mich 591, 597; 614 NW2d 88 (2000). However, a landowner's duty to protect or warn an invitee does not normally include removal of open and obvious dangers: "where the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no

duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee." *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Teufel v Watkins*, 267 Mich App 425, 427; 705 NW2d 164 (2005). The test is objective and the court should look to whether a reasonable person in the plaintiff's position would foresee the danger, not whether a particular plaintiff should have known that the condition was hazardous. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 5; 649 NW2d 392 (2002).

We conclude that the slippery floor that caused plaintiff's fall was an open and obvious danger. Plaintiff, and other bowlers, discovered that the floor was slippery before plaintiff fell. A person of ordinary intelligence would recognize that a slippery approach would present a danger to a bowler crossing the approach and plaintiff should have foreseen the risk. Thus, defendant had no duty to protect plaintiff. *Riddle*, *supra* at 96. Further, we disagree with plaintiff's contention that the "special aspects" exception applies to the facts of this case.

If there are "special aspects" of a condition that make even an "open and obvious" condition "unreasonably dangerous," the invitor retains the duty to undertake reasonable precautions to protect invitees from such danger. *Mann v Shusteric Enterprises*, 470 Mich 320, 328-329; 683 NW2d 573 (2004). In determining whether a danger presents an unreasonable risk of harm despite being open and obvious, a court must consider whether special aspects exist, such as a condition which is unavoidable or which poses an unreasonably high risk of severe injury. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516-517; 629 NW2d 384 (2001). The *Lugo* Court gave two examples of situations that might involve special aspects and present "an unreasonable risk of harm" despite their open and obvious character: a commercial building with only one exit for the general public where the floor is covered with standing water, and an unguarded 30-foot deep pit in the middle of a parking lot. *Id.* at 518.

First, plaintiff could have avoided the approach by choosing not to bowl or alerting defendant to the condition. See *id.* at 516-517. Second, the floor did not present an unreasonably high risk of injury and the fact that plaintiff suffered a serious injury cannot be considered when evaluating whether the condition was unreasonably risky. See *id.* at 518 n 2. Lastly, a slippery floor does not present the same level of danger and risk as a commercial building surrounded by water or an unguarded 30-foot deep pit in the middle of a parking lot. See *id.* at 518. The special aspects doctrine does not apply to the case at bar.

Reversed and remanded for entry of an order granting defendant's motion for summary disposition. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Bill Schuette